

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
MARITIME COMMUNICATIONS/LAND	)	EB Docket No. 11-71
MOBILE, LLC	)	File No. EB-09-IH-1751
	)	FRN: 0013587779
Participant in Auction No. 61 and Licensee of Various)	
Authorizations in the Wireless Radio Services)	
)	
Applicant for Modification of Various Authorizations)	
in the Wireless Radio Services;)	
)	
Applicant with ENCANA OIL AND GAS (USA), INC.;	)	Application File Nos.
DUQUESNE LIGHT COMPANY; DCP	)	0004030479, 0004144435,
MIDSTREAM, LP; JACKSON COUNTY RURAL	)	0004193028, 0004193328,
MEMBERSHIP ELECTRIC COOPERATIVE; PUGET	)	0004354053, 0004309872,
SOUND ENERGY, INC.; ENBRIDGE ENERGY	)	0004310060, 0004314903,
COMPANY, INC.; INTERSTATE POWER AND	)	0004315013, 0004430505,
LIGHT COMPANY; WISCONSIN POWER AND	)	0004417199, 0004419431,
LIGHT COMPANY; DIXIE ELECTRIC	)	0004422320, 0004422329,
MEMBERSHIP CORPORATION, INC.; ATLAS	)	0004507921, 0004153701,
PIPELINE—MID CONTINENT, LLC; DENTON	)	0004526264, 0004636537,
COUNTY ELECTRIC COOPERATIVE, INC., DBA	)	and 0004604962
COSERV ELECTRIC; AND SOUTHERN)	
CALIFORNIA REGIONAL RAIL AUTHORITY)	
)	
For Commission Consent to the Assignment of Various)	
Authorizations in the Wireless Radio Services)	

To: Marlene H. Dortch, Secretary
Attn: The Honorable Richard L. Sippel, Chief Administrative Law Judge

MOTION FOR SUMMARY DECISION OF ISSUE G

**CHOCTAW TELECOMMUNICATIONS, LLC
and CHOCTAW HOLDINGS, LLC**

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January 24, 2013

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SUMMARY

Issue G of the *HDO* designates two discrete issues with regard to MCLM DIP's licenses for site-based AMTS stations, i.e., whether the licenses have canceled because: (a) the stations were not timely constructed pursuant to 47 C.F.R. § 80.49(a); or (b) operation of the stations has been permanently discontinued. Summary decision is warranted with regard to both aspects of Issue G.

The Presiding Judge should issue a summary decision resolving the “timely construction” aspect of Issue G as to MCLM DIP's site-based licenses that remain at issue in this proceeding. Commission precedent demonstrates that these licenses were timely constructed pursuant to 47 C.F.R. § 80.49(a).

The Presiding Judge should also find that there is no genuine issue of material fact regarding the “permanent discontinuance” aspect of Issue G with regard to the site-based licenses at issue in this proceeding. Nothing in the Commission's rules or precedent provides the Presiding Judge with standards by which to render a judgment regarding whether operation of an AMTS station has been permanently discontinued. Absent such standards, principles of due process bar the Presiding Judge from rendering an adverse ruling that would result in the automatic cancellation of the licenses. Simply put, fundamental principles of due process preclude the Commission from enforcing unwritten, uncodified rules particularly when doing so would subject an entity to serious civil penalty, including loss of a Commission license. Consequently, questions regarding if and when operations at MCLM DIP's stations were discontinued are not material to any ruling the Presiding Judge can lawfully render in the hearing.

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MOTION FOR SUMMARY DECISION OF ISSUE G

Choctaw Telecommunications, LLC and Choctaw Holdings, LLC (hereinafter collectively “Choctaw”), by their attorneys and pursuant to 47 C.F.R. § 1.251(a)(1), hereby move for summary decision of Issue G of the *HDO*.¹ This motion covers all of the site-based Automated Maritime Telecommunications Systems (“AMTS”) stations that Choctaw

¹ *Maritime Communications/Land Mobile, LLC*, 26 FCC Rcd 6520, 6546 ¶¶ 61 and 6547 ¶ 62(g) (2011) (“*HDO*”).

understands are still subject to this proceeding.² As discussed below, the Presiding Judge should issue a summary decision:

- finding that there is no genuine issue of material fact regarding whether the site-based AMTS licenses that remain at issue in this proceeding were timely constructed pursuant to 47 C.F.R. § 80.49(a); and
- finding that there is no genuine issue of material fact regarding whether operations at any or all of the site-based AMTS license subject to this proceeding have been permanently discontinued pursuant to 47 C.F.R. § 1.955.

I. INTRODUCTION

Maritime Communications/Land Mobile, LLC (“Maritime”) held licenses for a number of site-based AMTS stations.³ Maritime was also the winning bidder for geographic AMTS licenses in Commission Auction No. 61.⁴ On August 1, 2011, Maritime filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court, Northern District of Mississippi (the “Bankruptcy Court”) and, in that context, the licenses ultimately were assigned to Maritime Communications/Land Mobile, LLC Debtor-in-Possession (“MCLM DIP”).

On November 15, 2012, after a hearing, the Bankruptcy Court confirmed the Chapter 11 reorganization plan, calling for the assignment of the AMTS licenses now held by MCLM-DIP to Choctaw (the “Bankruptcy Plan”). Rapid and effective implementation of the Plan necessitates speedy resolution of any issues relating to the geographic and site-based licenses so that the assignments from MCLM-DIP to Choctaw can be accomplished.

² A list of the site-based licenses that Choctaw understands are still subject to this proceeding is appended hereto as Exhibit A. Choctaw understands that, as discussed herein, the incumbent site-based AMTS licenses that are not listed in Exhibit A have been canceled or are in the process of being cancelled or deleted and, thus, are not relevant for purposes of Issue G or this motion.

³ *HDO*, 26 FCC Rcd at 6525 n.20 and 6546 ¶ 61.

⁴ *Id.* at 6524 ¶ 12.

To this end, Choctaw intervened in this proceeding to aid “the Presiding Judge’s consideration of the matter, especially as it relates to plans to pursue *Second Thursday*⁵ relief and the Plan confirmed by the Bankruptcy Court.”⁶ Also, on January 23, 2013, Choctaw filed an application to acquire the MCLM-DIP licenses, requesting, among other things, that the Wireless Telecommunications Bureau grant relief under the Commission’s *Second Thursday* doctrine. With the filing of the application and the request for *Second Thursday* relief, the Wireless Telecommunications Bureau is now the appropriate forum for resolving any questions relating to the geographic and site-based licenses, including Issue G. Consistent therewith, Choctaw filed a Petition to Stay this proceeding pending action on its applications and request for *Second Thursday* relief. One of the main reasons for seeking a stay was to protect innocent MCLM creditors from the substantial costs associated with a hearing, including discovery.

Choctaw believes that this hearing, including Issue G, should be terminated under the Commission’s *Second Thursday* doctrine, or, at a minimum, stayed pending resolution of Choctaw’s request for *Second Thursday* relief. Nevertheless, given the complexity of this case and the desire to re-pay innocent creditors as quickly as possible, Choctaw hereby moves for a summary decision of Issue G conditioned on the outcome of the pending stay and request for *Second Thursday* relief.⁷ Summary decision can be rendered based on prior Supreme Court and Commission precedent without the need for costly discovery.

⁵ The Commission’s long-standing *Second Thursday* doctrine is an exception from the Commission’s general policy of not permitting license assignments where the licensee is subject to a hearing regarding its character qualifications. *See Second Thursday Corp.*, 22 FCC2d 515 (1970), *recon. granted in part*, 25 FCC2d 112 (1970).

⁶ Motion to Intervene at 2.

⁷ A positive judgment on either the Petition for Stay or the request for *Second Thursday* relief will render this motion moot.

II. BACKGROUND

Issue G of the *HDO*, and thus this motion, relates exclusively to MCLM DIP's site-based AMTS licenses. Specifically, Issue G directs Chief Administrative Law Judge Sippel ("Presiding Judge" or "ALJ") "[t]o determine whether Maritime constructed or operated any of its stations at variance with sections 1.955(a) and 80.49(a) of the Commission's rules."⁸ The *HDO* clarifies that this issue was "designated to determine whether any of Maritime's *site-based* licenses were constructed or operated in violation of sections 1.955(a) and 80.49(a) of the Commission's rules."⁹ Section 1.955(a) provides in pertinent part that Commission licenses terminate automatically if: "the licensee fails to meet applicable construction or coverage requirements"; or "service is permanently discontinued."¹⁰ Section 80.49(a) sets out the specific construction and coverage requirements applicable to AMTS licenses such as those designated for hearing in this case.¹¹ The Commission's rules lack any definition of permanent discontinuance for purposes of AMTS licenses.¹²

⁸ *Id.* at 6547 ¶ 62(g).

⁹ *Id.* at 6546 ¶ 61 (emphasis added).

¹⁰ 47 C.F.R. § 1.955(a)(2) and (a)(3). If the Presiding Judge determines that any of these AMTS stations have been constructed or operated at variance with sections 1.955(a) and 80.49(a), the licenses will be deemed to have been cancelled automatically. *HDO*, 26 FCC Rcd at 6546 n.164.

¹¹ 47 C.F.R. § 80.49(a).

¹² *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*, 25 FCC Rcd 6996, 7022 ¶ 67 (2010) ("*Discontinuance NPRM*") ("Part 80 [of the Commission's rules], which governs stations in the Maritime Services, does not currently define permanent discontinuance of operations."); *Northeast Utilities Service Company; Paging Systems, Inc.*, 24 FCC Rcd 3310, 3313 ¶ 9 (WTB 2009) ("*Northeast Utilities*") ("Part 80, unlike some rule parts, does not set forth a specific period of non-operation after which the operation will be deemed to have permanently discontinued.").

Since release of the *HDO*, many of the site-based AMTS licenses have been deemed deleted for purposes of Issue G.¹³ These incumbent stations are subsumed within the geographic area and frequency block of MCLM DIP's geographic licenses and have either been cancelled or are subject to an application to delete them from the subsumed portions. These deleted or cancelled stations are the subject of a currently pending request for partial summary decision¹⁴ and have been deemed deleted for purposes of Issue G.¹⁵

As to the remaining licenses not covered in the pending summary decision motion, Commission precedent demonstrates that the stations were timely constructed consistent with 47 C.F.R. § 80.49(a).¹⁶ Thus, as discussed below, the Presiding Judge should grant summary decision on the "timely construction" aspect of Issue G as to all of the remaining stations.

The Presiding Judge also should find that there is no genuine issue of material fact for determination at the hearing as to whether service had been permanently discontinued at each of the relevant stations. As discussed below, nothing in the Commission's rules or precedent provides the Presiding Judge with standards by which to render a legal judgment regarding whether operation of an AMTS station has been permanently discontinued. As such, questions

¹³ See *Maritime Communications/Land Mobile, LLC*, EB Docket No. 11-71, Limited Joint Stipulations Between Enforcement Bureau and Maritime and Proposed Discovery, Schedule at 2-4 (filed May 31, 2012); see also *Maritime Communications/Land Mobile, LLC*, EB Docket No. 11-71, Enforcement Bureau's Response to Maritime's Motion for Partial Summary Decision (filed Sept. 17, 2012) ("EB Response").

¹⁴ Motion for Partial Summary Decision (filed Aug. 31, 2012) ("Summary Decision Motion"). Choctaw understands that Station WRV374, Location 31, was inadvertently omitted from the Summary Decision Motion, but this station is deemed deleted for purposes of Issue G. See Limited Joint Stipulations Between Enforcement Bureau and Maritime and Proposed Discovery Schedule, at 4 ¶ 7 (filed Nov. 28, 2012) ("Limited Stipulations").

¹⁵ See, e.g., Limited Stipulations.

¹⁶ See *Mobex Network Services, Inc.*, 20 FCC Rcd 17957 (WTB 2005), *order on recon.* 22 FCC Rcd 665 (WTB 2007), *order on rev.* 25 FCC Rcd 3390 (2010), *recon. pending*; *Mobex Network Services, Inc.*, 19 FCC Rcd 24939 (WTB 2004). See also *Waterway Communications System, Inc.*, 2 FCC Rcd 7317 (1987) ("Watercom Order").

regarding if and when operations at the stations were discontinued are not material to any ruling the Presiding Judge can lawfully render in the hearing. The Presiding Judge thus should resolve by summary decision the “permanent discontinuance” aspect of Issue G with respect to all of the site-based licenses at issue in this proceeding.

III. ARGUMENT

The Commission’s rules authorize “any party” to “move for summary decision of all or any of the issues set for hearing.”¹⁷ Further, summary decision is proper upon a showing “that there is no genuine issue of material fact for determination at the hearing.”¹⁸

Choctaw formally moved for leave to intervene in this proceeding on December 10, 2012 and the Presiding Judge granted the motion by order issued December 14, 2012. Choctaw is thus a “party” to this proceeding for purposes of section 251(a).

Summary decision is warranted with regard to Issue G because (1) there is no genuine issue of material fact regarding whether the stations in question were timely constructed and (2) questions regarding when and if operations at the stations were discontinued are not material to any legal issue properly subject to this hearing. The Presiding Judge should therefore grant this motion for summary decision on Issue G.

A. The Stations Were Timely Constructed Consistent With 47 C.F.R. § 80.49(a).

There can be no dispute that the relevant stations were timely constructed consistent with 47 C.F.R. § 80.49(a). With regard to one subset of these stations – the so-called Watercom Licenses (WHG700-WHG-703 and WHG705-WHG754) – the Commission long ago issued a final decision concluding that the stations were timely constructed.¹⁹ Over 25 years ago, the

¹⁷ 47 C.F.R. § 1.251(a)(1).

¹⁸ *Id.*

¹⁹ *See Watercom Order*, 2 FCC Rcd at 7317.

Commission reviewed and granted renewal applications for the Watercom Licenses based in part on a finding that the licensee “has now completed construction of its system and is providing service to the maritime community.”²⁰ As the Commission stated:

Watercom was required to meet a schedule of construction, regularly kept us apprised of the status of construction and put the system into operation within the time we had allowed. So there can be no question of spectrum hoarding or other dereliction in its inauguration of service.²¹

The Enforcement Bureau agrees that “there is no genuine issue of material fact for determination at the hearing as to whether the Watercom Licenses were timely constructed in accordance with Section 80.49(a) of the Commission’s rules.”²² Choctaw also agrees and urges the Presiding Judge to issue a summary decision of Issue G finding that the Watercom Licenses were timely constructed in accordance with 47 C.F.R. § 80.49(a).

With regard to the remaining licenses, the Wireless Telecommunications Bureau and the Commission have both rejected allegations that the stations were not timely constructed consistent with 47 C.F.R. § 80.49(a). Indeed, this issue was raised in opposition to the assignment of the licenses from Mobex Network Services, Inc. to Maritime and rejected by both the Bureau and the Commission.²³ In an order renewing these licenses, the Wireless Telecommunications Bureau again addressed the question of whether these stations were timely constructed and concluded:

The Bureau's review of AMTS construction and operational information undertaken in anticipation of the AMTS auction confirmed that the vast majority of the facilities at issue were

²⁰ *Id.* at 7317 ¶ 4.

²¹ *Id.* at 7319 ¶ 16.

²² EB Response at 5.

²³ *See Mobex Network Services*, 19 FCC Rcd at 24939; *Mobex Network Services*, 25 FCC Rcd at 3390.

timely constructed. The additional information obtained during the Bureau's review is now reflected in our licensing database, and unconstructed facilities have been deleted. Even assuming *arguendo* that the initial activation notices were defective, deeming the licenses for the constructed stations to have automatically canceled as a result would not further the purpose of the construction notification requirement. We therefore conclude that it would not further the public interest to deny Mobex's renewal and transfer applications *en masse* based on defects in the activation notices for facilities that were in fact timely constructed.²⁴

Based on this substantial prior precedent, the Chief Judge should find there is no genuine issue of material fact regarding whether the site-based licenses remaining in this proceeding were timely constructed.

B. Issues Regarding If and When Operations at MCLM DIP's AMTS Stations Were Discontinued Are Not Material.

The "permanent discontinuance" aspect of Issue G presents no genuine material issue of fact for the Presiding Judge to resolve at hearing. Admittedly, there remain unresolved questions of fact regarding whether, when, and for how long operations at many of MCLM DIP's stations were suspended, but it is clear that Maritime never intended to permanently discontinue operations.²⁵ Thus, the question becomes whether operations at any of the AMTS stations were permanently discontinued because service at the stations may have been suspended for some period of time. There is, however, no standard for determining how long an AMTS station can remain non-operational before operations are deemed to be permanently discontinued.

²⁴ *Mobex Network Services*, 19 FCC Rcd at 24941-42 ¶ 6.

²⁵ See Response to the Enforcement Bureau's Third Set of Interrogatories to Maritime Relating to Nonconstruction and Discontinuance of Service, Response to Inquiry 3 (Oct. 31, 2012); Amended and Further Supplemental Response to Joint Interrogatories to Maritime Relating to Nonconstruction and Discontinuance of Service, Response to Inquiries 13 and 14 (Mar. 16, 2012); Further Supplemental Response to Joint Interrogatories to Maritime Relating to Nonconstruction and Discontinuance of Service, Response to Inquiry 14 (Feb. 28, 2012); Response to Joint Interrogatories to Maritime Relating to Nonconstruction and Discontinuance of Service, Response to Inquiry 7 (Feb. 6, 2012).

Therefore, unresolved questions of fact regarding whether, when, and for how long operations at many of MCLM DIP's stations were suspended are not material to any legal judgment the Presiding Judge can properly render in this proceeding.

As noted above, a finding by the Presiding Judge that operations at MCLM DIP's AMTS stations have been permanently discontinued would result in the automatic cancellation of the relevant licenses.²⁶ The Commission's rules and precedent, however, are totally devoid of standards by which the Presiding Judge may render a judgment that operation of an AMTS station has been permanently discontinued. The Commission has acknowledged that, precisely because of the severe consequence of permanent discontinuance, namely termination of the authorization, "it is imperative that [its] rules provide a clear and consistent definition of permanent discontinuance of operations; they do not."²⁷

Principles of due process preclude the Commission from enforcing such unwritten, uncodified rules, particularly when doing so would subject an entity to serious civil or criminal penalty. In *Trinity Broadcasting*, the United States Court of Appeals for the District of Columbia Circuit reversed the Commission's decision to deny a television license renewal application on the grounds that the applicant did not have adequate notice as to how the Commission was interpreting its minority preference regulations.²⁸ The court explained that:

Because "[d]ue process requires that parties receive fair notice before being deprived of property," we have repeatedly held that "[i]n the absence of notice – for example, where the regulation is not sufficiently clear to warn a party about what is expected of it –

²⁶ See *supra* note 10.

²⁷ *Discontinuance NPRM*, 25 FCC Rcd at 7017 ¶ 50.

²⁸ *Trinity Broadcasting of Florida, Inc. v. FCC*, 211 F.3d 618 (D.C. Cir. 2000) ("*Trinity Broadcasting*").

an agency may not deprive a party of property by imposing civil or criminal liability.”²⁹

Thus, the court ruled that the Commission may deprive a regulated entity of a license only if:

... “by reviewing the regulations and other public statements issued by the agency, a regulated party acting in good faith would be able to identify, with ascertainable certainty, the standards with which the agency expects parties to conform. . . .”³⁰

The Supreme Court recently reconfirmed these fundamental principles in *Fox Television Stations*. In that case, the Court found that the Commission violated broadcast networks’ due process rights by failing to give them fair notice that a fleeting expletive or a brief shot of nudity could be actionably indecent.³¹ The Court explained that:

[The] requirement of clarity in regulation is essential to the protections provided by the *Due Process Clause of the Fifth Amendment*. . . . A conviction or punishment fails to comply with due process if the statute or regulation under which it is obtained “fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.”³²

The Court went on to state that:

Even when speech is not at issue, the void for vagueness doctrine addresses at least two connected but discrete due process concerns: first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way.³³

These principles apply with full force in this case.

²⁹ *Id.* at 628 (alterations in original) (quoting *General Elec. Co. v. EPA*, 53 F.3d 1324, 1328-29 (D.C. Cir. 1995) (“*GE*”)).

³⁰ *Id.* at 628 (quoting *GE*, 53 F.3d at 1329).

³¹ *FCC v. Fox Television Stations*, ___ U.S. ___, 132 S.Ct. 2307 (2012) (“*Fox Television Stations*”).

³² *Fox Television Stations*, 132 S.Ct. at 2317 (citations omitted).

³³ *Id.* (citations omitted).

It is beyond dispute that nothing in the Commission's rules or precedent provided Maritime or any other AMTS license fair notice of what constitutes permanent discontinuance of an AMTS station. Section 1.955(a)(3) provides in pertinent part:

Authorizations automatically terminate, without specific Commission action, if service is permanently discontinued. *The Commission authorization or the individual service rules govern the definition of permanent discontinuance for purposes of this section.*³⁴

As noted above, however, "Part 80 [of the Commission's rules], which governs stations in the Maritime Services, does not currently define permanent discontinuance of operations."³⁵ In other words, nothing in the Commission's rules establish with ascertainable certainty the specific conduct or omission that constitutes permanent discontinuance for purposes of AMTS stations.

The Commission's precedent confirms the lack of ascertainable certainty with regard to the permanent discontinuance standards for AMTS licenses. The Commission has adopted inconsistent and differing standards with regard to some radio services³⁶ and has established no standards for other services, including Part 80 services such as AMTS.³⁷ As the Commission admits, such conflicting and inconsistent standards might lead licensees in some services reasonably to conclude that they "could discontinue service for a long period without fear of

³⁴ 47 C.F.R. § 1.955(a)(3) (emphasis added).

³⁵ *Discontinuance NPRM*, 25 FCC Rcd at 7022 ¶ 67.

³⁶ *Id.* at 7017-18 ¶ 52. *See also* 47 C.F.R. § 22.317 (which governs operations in the Paging and other services and provides that "any station that has not provided service to subscribers for 90 continuous days is considered to have been permanently discontinued. . . ."); *id.* § 90.157(a) (which governs operations in most Part 90 services and provides that "any station which has not operated for one year or more is considered to have been permanently discontinued.").

³⁷ *Discontinuance NPRM*, 25 FCC Rcd at 7017-18 ¶ 52.

automatic license termination.”³⁸ This is hardly an ascertainably certain standard for permanent discontinuance.

The Commission’s efforts to evaluate claims of permanent discontinuance for Part 80 stations on a case-by-case basis are similarly unhelpful. In *Northeast Utilities*, for instance, the Wireless Telecommunications Bureau, in an order released in 2009, concluded that there was no permanent discontinuance at a facility that had not operated for several years.³⁹ By contrast, the Commission previously concluded that MCLM DIP’s authorization for a site-based station in Chicago automatically canceled because the licensee “had not had equipment at that location for years”⁴⁰ The Commission, however, offered no analysis to support this conclusion and did not provide any express standards for what does and does not constitute permanent discontinuance.⁴¹ Such inconsistent and incoherent analyses by the Commission and its Bureau cannot be said to “to provide a person of ordinary intelligence fair notice of what is prohibited.”⁴² Moreover, the simple fact that the Commission could develop a “reasonable” interpretation of permanent discontinuance through a case-by-case analysis does not, in and of itself, provide Maritime fair notice of its obligations.⁴³ Nor can generalized references to the

³⁸ *Id.*

³⁹ *Northeast Utilities*, 24 FCC Rcd at 3313-14 ¶¶ 9-10.

⁴⁰ *See Mobex Network Services*, 25 FCC Rcd at 3395 ¶ 10.

⁴¹ Furthermore, it appears that the decision was premised on a prior factual determination that Maritime’s predecessor had moved from the original site to a new location, thus suggesting that the authorized site had been abandoned. *See Mobex Network Services*, 20 FCC Rcd 17959, 17961-62 ¶ 5 (WTB 2005).

⁴² *Fox Television Stations*, 132 S.Ct. at 2317.

⁴³ *Trinity Broadcasting*, 211 F.3d at 628.

Commission's "underlying purpose" behind the permanent discontinuance rules "provide the fair notice required by due process."⁴⁴

In sum, there is no Commission rule or precedent that would allow Maritime to determine with "ascertainable certainty" how long an AMTS station could remain out of service before its license would be held to have terminated. Further, neither the Commission nor the honorable Presiding Judge may, consistent with the requirements of due process as articulated in *Trinity Broadcasting* and *Fox Television Stations*, develop a definition of permanent discontinuance in this case and apply it retroactively and without notice to deprive MCLM DIP of its AMTS licenses. Thus, any factual issues underlying the "permanent discontinuance" aspect of Issue G are simply not material to any legal judgment the Presiding Judge may properly render in the course of the hearing.

IV. CONCLUSION

For the foregoing reasons, the Presiding Judge should grant summary decision of Issue G. Specifically, the Presiding Judge should rule that MCLM DIP's site-based AMTS licenses at issue in this hearing were timely constructed in accordance with 47 C.F.R. § 80.49(a). The Presiding Judge should also rule that MCLM DIP is entitled to summary disposition on the

⁴⁴ *Id.* at 631.

“permanent discontinuance” aspect of Issue G with regard to all of the site-based AMTS licenses at issue in this hearing.

Respectfully submitted,

**CHOCTAW TELECOMMUNICATIONS, LLC
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January 24, 2013

CERTIFICATE OF SERVICE

I, Bridget E. Anderson, do hereby certify that on this 24th day of January, 2013, the foregoing Motion for Summary Decision on Issue G was served by email and first class mail, postage prepaid, on the following persons:

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KAE889	20	ORCAS ISLAND	SAN JUAN	WA
KAE889	22	EUGENE	LANE	OR
KAE889	30	BREMERTON	JEFFERSON	WA
KAE889	34	OLYMPIA	THURSTON	WA
KAE889	46	WOODBURN	MARION	OR
KAE889	48	SEATTLE	KING	WA
WHG693	Blk B	VENICE	PLAQUEMINES	LA
WHG701	Blk B	SANTA ROSA BEACH	WALTON	FL
WHG702	Blk B	THEODORE	MOBILE	AL
WHG703	Blk B	DELISLE	HARRISON	MS
WHG705	Blk B	AMELIA	ASSUMPTION	LA
WHG706	Blk B	INTRACOASTAL CITY	VERMILION	LA
WHG707	Blk B	PORT ARTHUR	JEFFERSON	TX
WHG708	Blk B	DICKINSON	GALVESTON	TX
WHG709	Blk B	BAY CITY	MATAGORDA	TX
WHG710	Blk B	ARANSAS PASS	SAN PATRICIO	TX
WHG711	Blk B	RIVIERA	KLEBERG	TX
WHG712	Blk B	JEFFERSON HEIGHTS	JEFFERSON	LA
WHG713	Blk B	CARVILLE	IBERVILLE	LA
WHG714	Blk B	REDWOOD	WARREN	MS
WHG715	Blk B	WAYSIDE	WASHINGTON	MS
WHG716	Blk B	LAKE CORMORANT	DESOTO	MS
WHG717	Blk B	SAMBURG	OBION	TN
WHG718	Blk B	ALTO PASS	UNION	IL
WHG719	Blk B	MADONNAVILLE	MONROE	IL
WHG720	Blk B	GRAFTON	JERSEY	IL
WHG721	Blk B	SAVERTON	RALLS	MO
WHG722	Blk B	ADRIAN	HANCOCK	IL
WHG723	Blk B	REYNOLDS	ROCK ISLAND	IL
WHG724	Blk B	MILES	JACKSON	IA
WHG725	Blk B	SHERRILL	DUBUQUE	IA
WHG726	Blk B	MIDWAY	MASSAC	IL
WHG727	Blk B	HEBBARDSVILLE	HENDERSON	KY
WHG728	Blk B	ELIZABETH	FLOYD	IN
WHG729	Blk B	BEDFORD	TRIMBLE	KY
WHG730	Blk B	INDEPENDENCE	KENTON	KY
WHG731	Blk B	FAIRVIEW	ADAMS	OH
WHG732	Blk B	LETITIA	GREENUP	KY
WHG733	Blk B	GREASY RIDGE	LAWRENCE	OH
WHG734	Blk B	MEREDOSIA	MORGAN	IL
WHG735	Blk B	HANNA CITY	PEORIA	IL
WHG736	Blk B	TONICA	LA SALLE	IL
WHG737	Blk B	LOCKPORT	WILL	IL
WHG738	Blk B	FORDS FERRY	CRITTENDEN	KY
WHG739	Blk B	MOOLEYVILLE	BRECKINRIDGE	KY
WHG740	Blk B	BASHAN	MEIGS	OH
WHG741	Blk B	BROWNSVILLE	MONROE	OH
WHG742	Blk B	LANSING	ALLAMAKEE	IA
WHG743	Blk B	WITOKA	WINONA	MN
WHG744	Blk B	DIAMOND BLUFF	PIERCE	WI
WHG745	Blk B	LAUREL HILL	WEST FELICIANA	LA
WHG746	Blk B	PINE RIDGE	ADAMS	MS
WHG747	Blk B	RENA LARA	COAHOMA	MS
WHG748	Blk B	FULTON	LAUDERDALE	TN
WHG749	Blk B	SHADYSIDE	BELMONT	OH
WHG750	Blk B	HOOKSTOWN	BEAVER	PA
WHG751	Blk B	AVALON BEACH	SANTA ROSA	FL

Remaining Facilities				
Call Sign	Loc/Blk	City	County	State
WHG752	Blk B	LAKE CHARLES	CALCASIEU	LA
WHG753	Blk B	PORT LAVACA	CALHOUN	TX
WHG754	Blk B	RAYMONDSVILLE	WILLACY	TX
WHV733	1	STOKES COUNTY	STOKES	NC
WHV733	2	HILLSBOROUGH	ORANGE	NC
WHV733	3	ROCKFISH	CUMBERLAND	NC
WHV740	2	AUGUSTA	RICHMOND	GA
WHV843	1	CEASARS HEAD	GREENVILLE	SC
WHV843	5	GASTONIA	GASTON	NC
WHV843	6	LITTLE MOUNTAIN	NEWBERRY	SC
WRV374	8	MANGONIA PARK	PALM BEACH	FL
WRV374	12	ORLANDO	ORANGE	FL
WRV374	14	SELDEN	SUFFOLK	NY
WRV374	15	VERONA	ESSEX	NJ
WRV374	16	ALLENTOWN	LEHIGH	PA
WRV374	18	VALHALLA	WESTCHESTER	NY
WRV374	19	MIAMI	MIAMI-DADE	FL
WRV374	20	RAYMOND	CUMBERLAND	ME
WRV374	22	SPAULDING	DUVAL	FL
WRV374	23	CHARLESTON	CHARLESTON	SC
WRV374	25	PERRINVILLE	MONMOUTH	NJ
WRV374	26	SAVANNAH	CHATHAM	GA
WRV374	33	NEW YORK	NEW YORK	NY
WRV374	34	FAJARDO		PR
WRV374	35	REHOBETH	BRISTOL	MA
WRV374	39	CLEARWATER	PINELLAS	FL
WRV374	40	HAMDEN	NEW HAVEN	CT